

MAGISTRATE DIVISION

MEDIATION



OREGON TAX COURT

Mailing Address:
1163 State Street
Salem, OR 97301-
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503-986-5650 (Magistrate Division)
503-986-5645 (Regular Division)

800-773-1162 (Toll Free)

Website: <http://courts.oregon.gov/courts/tax>

Hours of public service operation:
MONDAY through FRIDAY
8:00 a.m. to 12 Noon and 1:00 p.m. to 5:00 p.m.

Oregon law requires all writings submitted to this court to be in English. ORS 1.150.

All forms and writings must be in English. If you have another person translate your non-English answers to English, you must have the translator complete the Certificate of Translation (certificate). The certificate form is available by request from the court at 503-986-5650 (Magistrate Division), 503-986-5645 (Regular Division), or 800-773-1162 (toll free). The form is also on the court's website at <http://courts.oregon.gov/courts/tax>.

Requesting an Interpreter

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NOTE: THIS HANDBOOK IS NOT INTENDED AS LEGAL ADVICE AND SHOULD NOT BE USED AS A SUBSTITUTE FOR THE OREGON REVISED STATUTES AND RULES OF THE COURT.

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MAGISTRATE DIVISION
MEDIATION**

What is mediation?

Mediation in the Oregon Tax Court Magistrate Division is an informal voluntary process designed to help the parties reach an agreement. A magistrate, acting as mediator, will lead the mediation. The parties are in control of the outcome and work together to reach a mutually acceptable agreement that settles their dispute. The parties are expected to look to each other (not the mediator) to resolve the issues.

Mediation is not a trial. There is no “winner” or “loser.” The expectation is that all parties leave the mediation satisfied with the agreement.

A successful mediation requires that all parties work toward an agreement with open minds and respect for each other’s positions and ideas. The process works best when the parties discuss their dispute directly with each other, not the mediator. A settlement is reached when all the parties are in agreement.

What is the role of the mediator?

The mediator facilitates a conversation between the parties in an effort to help the parties reach a mutual agreement. Any agreement reached during the mediation is memorialized in writing and signed by the parties. Based on the signed agreement, the court files a judgment and closes the case.

The mediator is the neutral person in the room, who has no vested interest in the outcome of the mediation. The mediator is not a decisionmaker and will not issue findings of fact or render a decision in favor of one party and against another party. The mediator does not make a finding related to the disputed issues. The mediator will not determine who is right or what the settlement should be. The mediator helps the parties clarify the issue or issues, identify points of agreement,

and facilitate discussion of settlement options. Each party should be open and honest with the mediator.

Although settlement is the goal of mediation, not all mediations result in settlement. The magistrate serving as mediator will not be the magistrate assigned to hear the case at trial if the parties do not reach an agreement. The mediator will not discuss the mediation and related information with the magistrate assigned to hear the case at trial.

MEDIATION PROCESS

How do I request mediation?

Mediation in the Oregon Tax Court must be at the mutual request of the parties. A party interested in mediation should consult with the other party or parties before making a request to the court. Mediation is not mandatory. Not all cases or issues are appropriate for mediation.

A mediation request will be granted at the court's discretion.

Once the request is granted by the court, a date and time for the mediation will be set. It is common practice to set the mediation and trial date at the initial case management conference. The mediation date will be scheduled to allow sufficient time for the parties to prepare.

In general, mediations are held in person at the Tax Court Mediation Center in Salem. Mediations are infrequently held at a location other than the Tax Court Mediation Center, or by telephone.

What is the mediation process?

The mediation process begins after the parties mutually agree to participate. The mediator will send a letter to the parties approximately three to four weeks before the mediation, requesting a position paper. The position paper is a confidential document submitted to the mediator. The position paper will not be shared with the other party or parties

involved in the mediation or with any other magistrates. The position papers will not be part of the court's case records.

Failure by any party to submit a position paper by the deadline will result in a cancellation of the mediation.

What should I include in my position paper?

The position paper should include the main issues to be discussed during the mediation. The position paper should identify the strengths and weaknesses of each party's position. A party may also include any suggestions that would be helpful to reach an agreement.

The position paper provides an opportunity for each party to think about how the dispute can be resolved, considering various outcomes and strategies to reach a mutual agreement. It is important to remember that each party's position will have strengths and weaknesses. Each party's position paper should include not only the strengths, but also the weaknesses of its position. A common mistake is to list only the strengths of your position and list only the weaknesses of the other party's position. That approach is not beneficial because it fails to offer assistance to the mediator who is working with all parties to reach an agreement during mediation.

The mediator is able to assist the parties to reach an agreement when the mediator is made aware of all relevant information, and when the parties have an honest view of their positions.

Who can represent a party?

A party may represent itself at mediation or a party may be represented by a person who is authorized to represent that party in the Magistrate Division of the Oregon Tax Court. Each party participating in the mediation must have at least one person in attendance with full authority to settle all matters and issues. **It is unacceptable to delay the mediation process because an authorized representative needs to get approval to settle the disputed matter based on the mutual agreement of the parties who are present at the mediation.**

Is the mediation confidential?

In general, written and oral communications made in connection with this mediation are confidential and may not be disclosed to any other person, subject to statutory exceptions. ORS 36.220(1); *see also* TCR-MD 10. There are exceptions for communications related to abuse and the prevention of serious crime, as well as where disclosure to a third party is protected by an evidentiary privilege (such as the lawyer–client privilege). ORS 36.220(5)–(7). Evidence otherwise admissible or subject to disclosure outside of the mediation does not become inadmissible or protected from disclosure solely by reason of its use in this mediation. See ORS 36.220(3)–(4).

Certain specific rules apply to the Oregon Department of Revenue. See OAR 150-305-0320 (“Any statements made during mediation will be confidential except as provided for in ORS 314.840.”)

What are the rules and proper conduct for mediation?

The mediation process itself is not governed by formal rules or procedures that must be followed. The mediator will outline the basic procedures for the mediation. Parties should follow rules of common courtesy and show respect to the other parties. Parties should not interrupt each other. Parties should be respectful of all comments, suggestions, ideas, and positions.

The parties may meet together with the mediator in the same room, individually with the mediator in different rooms (referred to as a caucus), or in some combination of the two. No two mediations are alike, and the parties are encouraged to actively participate in designing a mediation process that is most beneficial to them.

What should I expect during mediation?

The mediation will be scheduled for at least one full day. The parties should be prepared to spend the entire day at the mediation. Breaks may be taken at any time. If a party requires a specific break time, that request should be made at the start of the mediation.

Each party should come to the mediation with an open mind and with a goal of settlement, and expect the other parties to do the same. Each party should be flexible in its positions and be prepared to have the strengths and weaknesses of its position discussed during the mediation. A party should expect to listen and be heard. Each party should be treated with respect by all of the other parties involved.

Each party should not assume or expect that the relief requested will be that reached by the parties at the conclusion of the mediation. A mutual agreement frequently requires each party to compromise with respect to its requested relief or desired outcome.

What is the outcome of mediation?

Mediation will have one of two outcomes. If the parties agree, the court will issue a judgment reflecting that agreement and close the case. If the parties are not able to reach an agreement, the case will continue to trial.

If the parties are unable to reach an agreement during the mediation, the parties are encouraged to continue to discuss the issues and work toward a settlement before trial. The scheduled trial will not be taken off of the court calendar until a stipulation signed by all parties is filed by the court.

STATUTE AND RULES

The following rules and statutes govern mediation in the Oregon Tax Court: Oregon Revised Statutes 305.501(2) and (3), Tax Court-Magistrate Division Rules 6, 8, 10, and 20.

Notes:

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